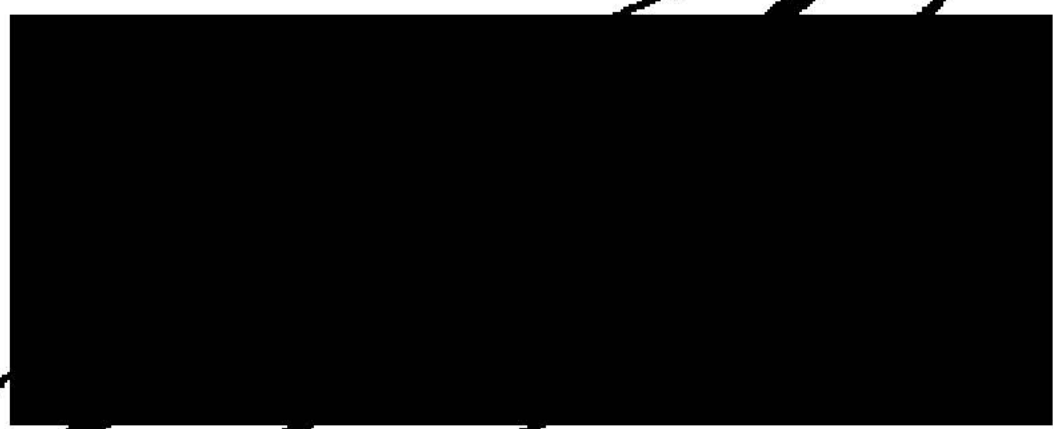




IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED	
14 July 2025 DATE	 SIGNATURE

Date: 14 July 2025

Case number: 064969/2025

In the matter between:

FERESANE MATTHEW SIBEKO

APPLICANT

And

MOGALE ANDRIES MOGASHOA

FIRST RESPONDENT

PE & M SOLUTIONS (PTY) LTD

SECOND RESPONDENT

(REGISTRATION NUMBER: 2015/224619/07)

JUDGMENT

MINNAAR AJ.

[1] On 19 June 2025, I delivered the following order:

- a. The application is heard as an urgent application and condonation is granted to the applicant in terms of Rule 6(12) of the Uniform Rules of Court in respect of the non-compliance with the prescribed methods of service, time limits and forms.
- b. It is declared that the first and second respondents are in contempt of the order granted on 28 May 2025.
- c. The first respondent is committed to serve a term of imprisonment for a period of 6 (six) months.
- d. The operation and execution of the order in paragraph (c) above is suspended on condition that the respondent comply with the order of 28 May 2025 within 24 hours from service of this order.
- e. A copy of this order must be served personally on the first respondent by the Sheriff and served via email on the second respondent.
- f. Should the respondents fail to act in accordance with paragraph (d) above, leave is granted to the applicant to again approach this court on the same papers, duly supplemented, to have the suspension of the order in paragraph (d) above lifted and for the order of imprisonment to become immediately operative.
- g. The respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of this application on the scale as between attorney and client.

[2] On 23 June 2025, an application for leave to appeal was delivered. The notice reflects the case number as 064696/2025. This case number is incorrect, as the correct case number is 064969/2025.

[3] In the notice, PE and M Solutions Pty Ltd ('the second respondent') is recorded as the applicant in the application for leave to appeal. The notice of application for leave to appeal was signed by Mr Mogaile Andries Mogashoa ('the first respondent').

[4] When the application for leave to appeal was heard, the first respondent noted his appearance on behalf of the second respondent and stated that he is appearing in a representative capacity on behalf of the second respondent. The first respondent made it clear that he is not appearing in his personal capacity. Premised on this representation, it is evident that it is only the second respondent that lodged the application for leave to appeal, and that the first respondent, despite having signed the notice of application for leave to appeal, is not a party to the application for leave to appeal.

[5] Applications for leave to appeal are dealt with in terms of the provisions of Rule 49 of the Uniform Rules of Court read with sections 16 and 17 of the Superiors Courts Act 10 of 2013 ("the Superior Courts Act").

[6] It is trite that the grounds of appeal must be clearly and succinctly set out in clear and unambiguous terms to enable the court and the respondent to be fully informed of the case the applicant seeks to make

out and which the respondent is to meet in opposing the application for leave to appeal. Rule 49(1)(b) is peremptory in this regard.¹

[7] It is imperative to repeat the contents of the notice of application for leave to appeal herein:

'KINDLY TAKE NOTE THAT the Applicant intends to file for an application for leave to appeal on a date yet to be arranged with the Registrar of the above court against the entire court order that was awarded to the Respondent this past Thursday the 19th of June 2025, to the Supreme Court of Appeal or alternatively a full bench of this very court.

PLEASE TAKE FURTHER NOTICE THAT the grounds of Appeal are as follows:

- 1. The award is riddled with Jurisdiction complications,*
- 2. The Court Order that it seeks to enforce, dated 28 June 2025, remains formally challenged by the Applicant, the same court is yet to hear those arguments?*
- 3. A prison term without a trial in South Africa, is totally **ludicrous putting it mildly; this is stuff straight out of Banana Republics, reeks of Apartheid tactics.***
- 4. The Applicant is a juristic person, what happened to those findings with an option of a fine, **the court order makes total mockery of the Judicial system, it's laughable and cannot in the context of***

¹ *Songomo v Minister of Law and Order* 1996 (4) SA 384 (E) at 385J – 386A

2025 be taken serious by anyone with a functioning brain.’ (my emphasis in **bold**)

[8] It is trite that appeals can only be lodged against orders that are final in effect. The only final order that was granted in the application is the finding that the first and second respondents are in contempt of the 28 May 2025 court order. It is, however, not stated in the application for leave to appeal that this court erred in granting this relief.

[9] The remainder of the granted order is suspended pending compliance by the respondents. As already pointed out, the second respondent is the party seeking leave to appeal. If regard is had to the order that was granted, read with the application for leave to appeal, the second respondent is seeking leave to appeal against an order that is not final in nature. The prison term referred to in the application for leave to appeal has no bearing on the second respondent, as it is the first respondent who might be committed to imprisonment should there be continuous contempt of the 28 May 2025 court order. No sanction for the contempt was imposed on the second respondent.

[10] Section 17(1) of the Superior Courts Act provides the test applicable to applications for leave to appeal. Section 17(1) reads as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

- (a) (i) *the appeal would have a reasonable prospect of success;*
or
- (ii) *there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;*
- (b) *the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and*
- (c) *where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”*

[11] Section 17(1)(a)(i) of the Superior Courts Act was dealt with in the decision of the Land Claim Court in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 (JDR 2325 (LCC); 2014 JDR 2325 in which Bertelsmann J held that the use of the word “would” (as opposed to could) in the provisions is an indication that the threshold for leave to appeal has been raised. It was further held that the word “would” indicates a measure of certainty that another court will differ from the judgment appealed against.²

[12] On the rigidity of the threshold, Plaskett AJA (as he then was) in which Cloete JA and Maya JA (as she then was) concurred, wrote the

² *Mont Chevaux Trust* at par 6. See further *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (1957/09) [2016] ZAGPPHC 489 (24 June 2016) par 25

following *S v Smith* 2012 (1) SACR 567 (SCA) ([2011] ZASCA 15) at paragraph 7:

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success. That the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[13] Under section 17(1)(a)(ii) of the Superior Courts Act the Court determining an application for leave to appeal ought to enquire whether there is a compelling reason for the appeal to be heard.³ The enquiry is factual and, therefore, each application ought to be decided on its own facts.

[14] Other considerations beyond the abovementioned statutory provisions would include where the material case is of substantial importance to the appellant and where the decision sought to be

³ Erasmus, Superior Court Practice (2021) A2-56 to 57

appealed against involves an important question of law⁴ or where required by the interests of justice.⁵

[15] If regard is had to my judgment, read with the application for leave to appeal, I conclude that, although subjectively to the second respondent, the case might be of substantial importance, the application lacks any semblance of prospect of success, let alone reasonable prospect of success.

[16] No other compelling reason is advanced as to why the appeal should be heard, and the interest of justice is not implicated. Neither is a valid, important question of law raised.

[17] As the provisions of section 17(1)(a) of the Superior Courts Act clearly demand, the application must be dismissed, as leave to appeal may only be given when the court believes that the intended appeal “would have” a reasonable prospect of success. The second respondent has failed to make out a case that another court would reach a different conclusion or outcome from the order *in casu*.

[18] The tone and language in the application for leave to appeal need to be addressed. Courts and their members are by no means immune to public criticism and accountability to those they serve.⁶ However, that

⁴ Erasmus, Superior Court Practice (2021) A2-56 to 57

⁵ *City of Tshwane v Afriforum* 2016 (6) SA 279 (CC) par 40

⁶ *S v Mamabolo (E TV and Others Intervening)* 2001 (3) SA 409 (CC) (2001 (1) SACR 686; 2001 (5) BCLR 449; [2001] ZACC 17) paras 29 – 30.

does not mean that it is open to a litigant to level unfounded and scurrilous attacks against judicial officers to further their own ends.⁷

[19] For the second respondent, through the first respondent, to state in the application for leave to appeal that the court's order is ludicrous, emanating out of a Banana Republic and reeking of Apartheid tactics, is uncalled for and insulting. The further allegation that the court order makes a total mockery of the judicial system, that it is laughable and cannot be taken seriously by anyone with a functioning brain, is equally uncalled for and insulting.

[20] During his submissions in reply, the first respondent apologised to the court and the legal representatives of the applicant for the insensitive and indecent tone of the words used in the application for leave to appeal. The court accepts this apology but still deems it necessary to attach a sanction to the language and tone used. The only appropriate sanction would be to impose a suitable costs order.

[21] Generally speaking, punitive costs orders are not frequently made, and exceptional circumstances must exist before they are warranted.⁸ *'The scale of attorney and client is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible*

⁷ *Mkhatshwa and Others v Mkhatshwa and Others* 2021 (5) SA 447 (CC) paras 25 and 26. See also *Minister of Cooperative Governance and Traditional Affairs v De Beer and Another* (Case no 538/2020) **[2021] ZASCA 95** (1 July 2021) par 118

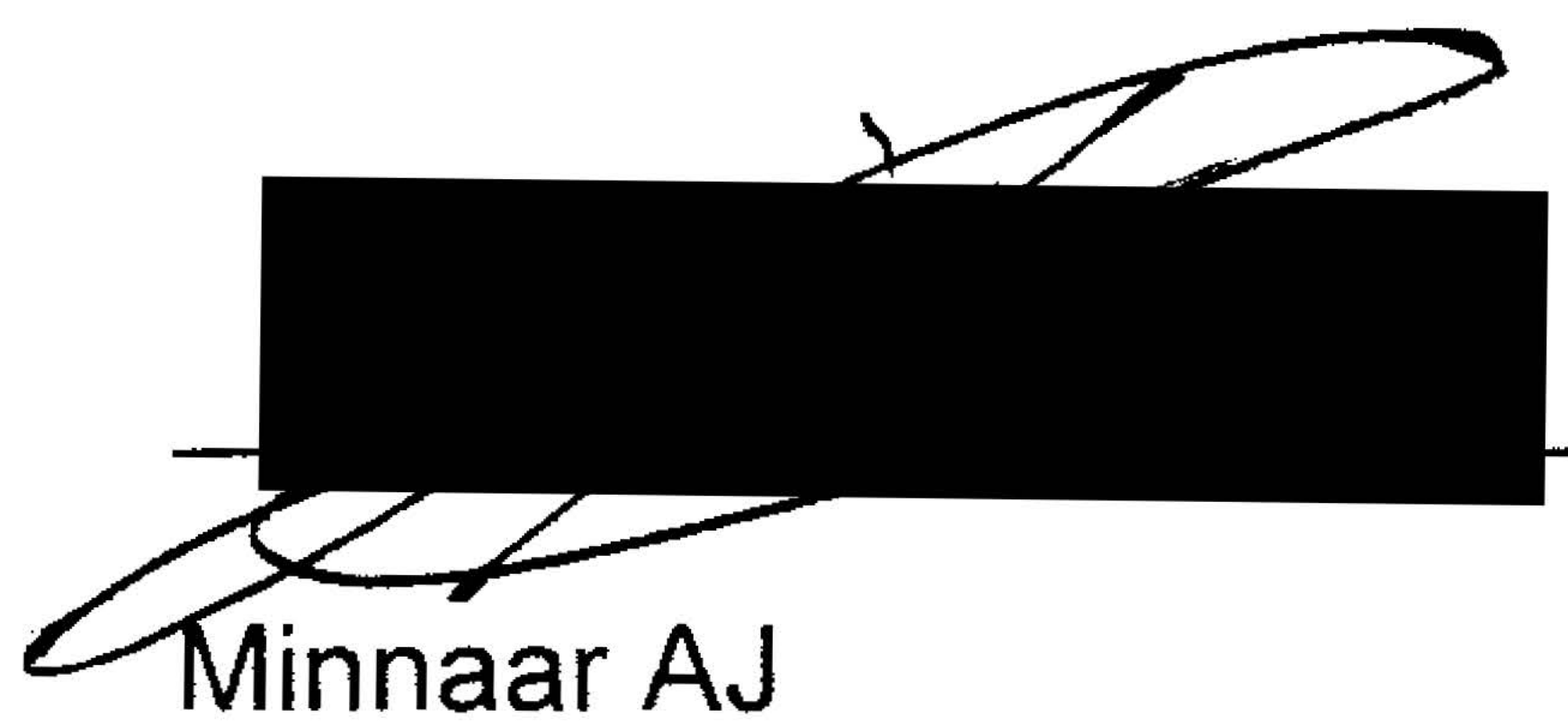
⁸ *Mkhatshwa* at par 21

*manner. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium.*⁹

[22] On the approach adopted by the second respondent, as facilitated by the first respondent, there is no basis why both respondents should not be liable for punitive costs.

[23] Consequently, I make the following order:

1. The application for leave to appeal is dismissed with costs on the scale as between attorney and client.



Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

⁹ *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) (2019 (9) BCLR 1113; [2019] ZACC 29) (SARB) paras 225

Heard on	: 11 July 2025 (virtually)
For the Applicant	: Adv Z Teperson
Instructed by	: Delberg Attorneys
For the Second Respondent	: Mr M A Mogashoa
Instructed by	: In person
Date of Judgment	: 14 July 2025